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11

12 Attorneys for Plaintiff California Coalition for Families and Children, PBC

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA  
15

16 CALIFORNIA COALITION FOR  
FAMILIES AND CHILDREN, et al.,

17 Plaintiffs,

18 v.  
19

20 SAN DIEGO COUNTY BAR  
ASSOCIATION, et al.,

21 Defendants

Case No. 3:13-cv-1944-CAB (BLM)  
Judge: Hon. Cathy Ann Bencivengo

PLAINTIFFS' MOTION TO TAKE  
EARLY DISCOVERY

Date: June 27, 2014  
Time: 2:00 p.m.  
Courtroom: 4C

ORAL ARGUMENT REQUESTED  
SUBJECT TO COURT APPROVAL

Complaint Filed: August 20, 2013

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**I. MOTION**

1 Plaintiffs hereby move this Court for leave to take discovery prior to a Rule  
2 26(f) conference (“Early Discovery Motion”) pursuant to Federal Rule of Civil  
3 Procedure 26(d), which provides:

4 A party may not seek discovery from any source before the parties have  
5 conferred as required by Rule 26(f), except in a proceeding exempted from  
6 initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by  
7 stipulation, or by court order.

8 Plaintiffs move for an order issuing the attached subpoena and permitting the  
9 taking of testimony at deposition and at hearing on Defendants’ Omnibus Motion to  
10 Dismiss Plaintiffs’ First Amended Complaint (Doc. No. 131) presently calendared for  
11 June 6, 2014, 2:00 p.m. in Department 4C.

12 Detailed below, Plaintiffs seek to depose and call Mr. Lucas as a witness on his  
13 Declaration In Support of Omnibus Motion to Dismiss First Amended Complaint  
14 (Doc. No. 131-2). In his Declaration, Mr. Lucas proffers to testify on extrinsic  
15 matters of his review of the complaint and exhibits, and offers expert witness  
16 testimony on legal standards of care. He also sponsors extrinsic evidence relating to  
17 Mr. Webb’s career as a litigator, and falsely characterizes certain cases in which Mr.  
18 Webb has been involved. He also falsely testifies regarding the history of this case.

19 **Plaintiffs respectfully request the Court to consider this motion prior to**  
20 **disposition of the Omnibus Motion to Dismiss.** Mr. Lucas’ expert and percipient  
21 witness testimony is tightly woven into the Omnibus, and consideration of the  
22 Omnibus prior to opportunity to cross examine Mr. Lucas would constitute a  
23 deprivation of Plaintiff’s Fifth and Seventh Amendment rights to notice and  
24 opportunity, and to confront witnesses. With the grant of this motion Plaintiffs would  
25 also respectfully request the Court to continue the Omnibus Motion hearing to permit  
26 completion of Mr. Lucas’ deposition and if necessary prepare and file supplemental  
27 briefing limited to the Rule 8 and Rule 41(b) issues.  
28

1 Plaintiffs have set dates in the attached subpoena to coincide with the hearing  
2 on this motion but will of course accommodate Mr. Lucas' schedule to arrange a  
3 more convenient time to conduct his deposition.

## 4 II. DISCUSSION

5 Mr. Lucas is lead counsel for Defendant San Diego County Bar Association.  
6 He represents himself to "have been designated by the Court as lead attorney to  
7 prepare defendants' Omnibus Motion to Dismiss." Lucas Decl. ¶ 1, 1:26-27. On  
8 behalf of these entities, on March 28, 2014, Mr. Lucas filed an "Omnibus Motion to  
9 Dismiss Plaintiff's First Amended Complaint" (Doc. 131) which attached a  
10 supporting memorandum (Doc. 131-1) and his declaration (Doc. 131-2).

11 Both the memorandum and declaration proffer testimony and exhibits from Mr.  
12 Lucas that constitute "matters outside of the pleadings" as that term is used in Federal  
13 Rule of Civil Procedure Rule 12(d). Mr. Lucas' specific assertions of fact and  
14 opinion outside of the pleadings include:

15 1. *Lucas' Testimony and Opinion Re: His Personal Analysis of the First*  
16 *Amended Complaint:* Beginning at paragraph 2 of Mr. Lucas' Declaration, Mr. Lucas  
17 offers to testify that he has reviewed the entire complaint and all exhibits, which he  
18 claims "are not readily identifiable, indexed, marked or organized." He claims the  
19 FAC asserts "every conceivable and inconceivable legal theory inbetween [sic]." He  
20 claims that he has spent "an inordinate amount of time along with my attorney staff  
21 studying the FAC and the attached exhibits, I still cannot determine which exhibits  
22 support the facts alleged, nor can I understand the purpose for which the exhibits are  
23 attached." He asserts that Exhibit 1 consists of a letter "demanding they stop the  
24 "others" who are violating civil rights to persons involved in family law matters."  
25 And that "[t]he letter is for the most part an unintelligible rant by plaintiff Stuart  
26 against the family law system..."

27 On cross examination described below, Plaintiffs intend to establish that Mr.  
28 Lucas' testimony is false and misleading.

1           2. *Lucas, Staff, and Defendants' Analysis of Exhibits Testimony:* Beginning at  
2 paragraph 3 of his declaration, Mr. Lucas offers to testify that “the additional  
3 documents plaintiffs attached as exhibits (again with no internal index and no chain  
4 of logic whereby a coherent analysis could be made of plaintiffs' points and  
5 evidence).” Mr. Lucas claims that the exhibits contain “several guides put out by  
6 councils and organizations involved with family law matters” and that “Again,  
7 despite my best effort, I cannot decipher which documents relate to the claims against  
8 the SDCBA. Nor have I been able to determine to a reasonable degree of legal  
9 certainty what specific claims are being made against the SDCBA in the FAC which,  
10 even more so than the original Complaint, continues to be overly verbose, confusing  
11 and unintelligible.”

12           On cross examination described below, Plaintiffs intend to establish that Mr.  
13 Lucas' testimony is false and misleading.

14           3. *Defendants' Omnibus Opposition:* Mr. Lucas' false and misleading  
15 testimony and opinion also permeates the Omnibus memorandum. He concludes that  
16 dismissal with prejudice as a sanction under Rule 41(b) is appropriate because, in his  
17 opinion, the FAC and Exhibits “fails to satisfy Rule 8” as a result of “poor  
18 lawyering.” The Omnibus alleges:

- 19           • The FAC is “unreasonably convoluted, confusing, and  
20 incomprehensible” (Omnibus 1:12-13);
- 21           • “The attachments appear to be exhibits but are not readily identifiable,  
22 indexed, marked, or organized. (Decl. Lucas ¶¶ 2, 3.)” (Omnibus X:X);
- 23           • “each defendant is forced to comb through pages of verbose, convoluted  
24 material to try to find any facts supporting any claim against them. Multi-theory  
25 combination claims exist throughout the F AC and make it impossible for the court  
26 to analyze and for defendants to respond.” (Omnibus 3:23-4:3);
- 27           • “... it is literally impossible to determine who is being sued for what.”  
28 (Omnibus 4:7-10);

1 • “The prejudice to the court and defendants is obvious in the inordinate  
2 amount of time and resources needed to review the F AC and respond.” (Omnibus  
3 7:23-24);

4 • “the FAC contains incomprehensible ramblings making it impossible to  
5 assert focused pleading attacks” (Omnibus 10:4-5);

6 • “Putting aside the implausible nature of the allegations that the SDCBA  
7 and many other private individual/entity defendants are all conspirators against  
8 Stuart in the state court orders and actions” (Omnibus 11:22-24);

9 • “the F AC is too difficult to understand as far as exactly who is asserting  
10 what claim against which defendant, the following may not cover every 12(b)(6)  
11 defect. These are essentially those that jumped out.” (Omnibus 13:4-6);

12 • “Although it is nearly impossible to find facts anywhere in this massive  
13 pleading,” (Omnibus 14:3-4);

14 • “Applying the plausible test, and drawing upon the court's judicial  
15 experience and common sense, the court can determine plaintiffs cannot state  
16 claims under 42 U.S.C. section 1983 against all defendants.” (Omnibus 14:16-18);

17 • The FAC so utterly defies the law set forth in Rules 8 and 9 that a  
18 dismissal with prejudice is proper, especially given this is not a case where a  
19 layperson plaintiff might be unfairly prejudiced by poor lawyering out of his control  
20 (Omnibus at 5:14).

21 This argument is tightly woven with Mr. Lucas’ proposed false and misleading  
22 testimony, constituting opinion testimony extraneous to the FAC.

23 *4. Proposed Testimony Regarding Plaintiffs’ Counsel Dean Browning Webb:*

24 Mr. Lucas also proffers substantial testimony consisting of extraneous analysis of  
25 several cases involving California Coalition’s counsel, Mr. Dean Webb. Specifically  
26 Mr. Lucas offers to testify:

27 • Defense counsel located orders by California District Courts denying  
28 and reversing attorney Webb's pro hac vice appointments, but was unable to locate a

1 database that would show whether his appointment in this case is improper because,  
2 for example, he has applied pro hac vice in other cases within the past year.

3 • Dean Browning Webb has been engaged in similar conduct for over 15  
4 years despite being sanctioned by the Ninth Circuit Court of Appeals for it.  
5 *Salstrom v. Citicorp Credit Services, Inc.*, 74 F.3d 183 (9th Cir. 1996) [sanctions  
6 against Dean Browning Webb affirmed for bad faith based on number and length  
7 of pleadings, timing of the filings, and substance of 4 claims, converting a simple  
8 debt collection into a full-fledged assault]. See also, *Stephens v. Marino, White,*  
9 *O'Farrell & Gonzalez*, 2011 WL 4747920, stating: "Many courts in this district and  
10 elsewhere have consistently and repeatedly warned Webb that his litigation  
11 practices are improper and problematic." The Stephens court cites several cases  
12 involving Webb's history of defective pleadings and prior warning he may be  
13 personally liable for "unreasonably and vexatiously multiplying proceedings." (See  
14 *Kauhi v. Countrywide Home Loans, Inc.*, 2008 WL 5191343; *Presidio Group, LLC*  
15 *v. Juniper Lakes Development, LLC*, 2010 WL 1331138. One judge even wrote a  
16 limerick about him. *Presidio Group, LLC v. GMAC Mortg. LLC*, 2008 WL  
17 2595675.

18 On cross examination described below, Plaintiffs intend to establish that Mr.  
19 Lucas' testimony is false and misleading.

20 5. *Expert Opinion*: Mr. Lucas describes his experience as an attorney and offers  
21 nothing short of expert opinion testimony on the adequacy of the Complaint and  
22 Exhibits, and authority to offer such opinions on behalf of all other defendants:

23 I am an attorney licensed to practice law before all courts in the State of  
24 California. I am a shareholder in Lucas & Haverkamp Law Firm, attorneys of  
25 record for defendant San Diego County Bar Association (SDCBA) in this  
26 action and have been designated by the Court as lead attorney to prepare  
27 defendants' Ominbus Motion to Dismiss.

1 Based on this extraneous evidence which is irrelevant to any issue that will  
2 *ever* be before this Court, Mr. Lucas opines that dismissal with prejudice and as a  
3 sanction under Rule 41(b):

4 “This case is proof that Webb has ignored repeated warnings which shows  
5 another chance to amend would be futile.”

6 Mr. Lucas’ proffered testimony is not merely argument. He makes numerous  
7 misrepresentations of matters entirely outside of the pleadings relating to Plaintiff’s  
8 counsel’s prior engagements, Mr. Lucas and his “attorney staff” analysis of the  
9 complaint and exhibits, his experience as an attorney, and offers that his opinions and  
10 competence is a relevant benchmark for evaluating a complaint under Rule 8(a). He  
11 concludes that because he and his staff are befuddled in spite of “inordinate” study,  
12 the Complaint constitutes “incomprehensible ramblings” (Omnibus at 9:4) and a  
13 “bucket of mud.” (Omnibus at 3). Mr. Lucas’ analysis of these extraneous matters  
14 concludes that “dismissal with prejudice is proper” based on his diagnosis of what he  
15 opines to be “poor lawyering” by Stuart, a plaintiff in pro se who Mr. Lucas claims  
16 “knows the rules and chose to violate them.” Omnibus 5:14-17.

17 Plaintiff vigorously disputes Mr. Lucas’s false and misleading *expert witness*  
18 *testimony* that Stuart and Mr. Webb have committed “poor lawyering” or have  
19 produced a complaint that fails to satisfy Rule 8. Mr. Lucas has proffered his  
20 willingness, availability, and competence to testify at hearing on these matters:

21 I have personal knowledge of the matters set forth herein and, if called as a  
22 witness, could and would competently testify thereto.” (Lucas Decl. 1:23-28).

23 Plaintiffs hereby move for an order that Mr. Lucas (1) appear for deposition  
24 under oath regarding Mr. Lucas’s representations, and (2) appear at hearing to testify  
25 regarding the same subject matter (hereafter the “Lucas & Haverkamp Discovery”).

26 **A. Good Cause Exists to Take Pre-Rule 26(f) Discovery**

27 District courts in this Circuit apply a conventional “good cause” standard in  
28 determining whether early discovery is warranted under Rule 26(d). *See, e.g.*,



1 *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002); *IO*  
2 *Group, Inc. v. Does 1-65*, No. C 10-4377 SC, 2010 WL 4055667, at \*2 (E.D. Cal.  
3 June 9, 2010); *Yokohama Tire Crop. V. Dealers Tire Supply, Inc.*, 202 F.R.D. 612,  
4 613-14 (D. Ariz. 2001) (collecting cases and standards). “Good cause may be found  
5 where the need for expedited discovery, in consideration of the administration of  
6 justice, outweighs the prejudice to the responding party.” *Semitoool, Inc.*, 208 F.R.D.  
7 at 276.

8 Good cause requires plaintiff to show a need for “immediate access to the  
9 requested discovery rather than postponing its ultimate production during the normal  
10 course of discovery.” *Id.* Upon this showing, “[t]he Court weighs this benefit to the  
11 administration of justice against the possible prejudice or hardship placed on  
12 Defendants.” *Id.*

13 Here, cross-examination of the extraneous, false, and misleading Lucas &  
14 Haverkamp Discovery is immediately relevant to this Court’s determination of the  
15 Omnibus Motion to Dismiss and Joinders on several grounds.

16 a. Lucas’ Testimony Imports Extraneous Matter Necessary to Establish Grounds  
17 Under *Nevijal*:

18 Defendants rely heavily on Mr. Lucas’ misrepresentations, extraneous matter,  
19 and insults in asserting their request in the OMNIBUS that the Court dismiss the FAC  
20 with prejudice as a *sanction* under Rule 41(b). The OMNIBUS positions a single  
21 case—*Nevijal v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981).—as the  
22 centerpiece of the OMNIBUS: “On point here, in [*Nevijel*] the court also looked at  
23 the plaintiffs history of alleging conspiracies and repeated failures to comply with the  
24 Rules of Civil Procedure. (*Id.* at pp. 674-675.) The plaintiffs history in other cases  
25 supported the conclusion that dismissal with prejudice was not an abuse of discretion.  
26 (*Id.*)” (Omnibus 7:15-19) and “Stuart and his counsel have engaged in a pattern of  
27 violating the Rules indicative of an unwillingness to comply such that another request  
28 to comply would be futile.” (Omnibus 7:25-27). To align *Nevijel* as “on point”

1 Defendants must assert extraneous *expert testimony and misrepresentations of fact*  
2 regarding Webb’s “prior history.” While demonstrable falsehoods, the allegations  
3 enable Defendants’ assertion of the extravagant remedy of dismissal as a sanction  
4 under Rule 41(b). Absent *Nevijal*, that remedy fails. Yet without an opportunity to  
5 cross examine Mr. Lucas and his “attorney staff” his extraneous opinions remain  
6 impugned, constituting onerous prejudice to Plaintiffs.

7 b. Lucas’ Competence to Testify Regarding Exhibits to Complaint:

8 Mr. Lucas’ offers nothing short of expert opinion testimony in his analysis of  
9 the FAC and exhibits, putting his competence and credibility as an expert and  
10 percipient at issue. If permitted to cross examine Mr. Lucas, Plaintiffs will establish  
11 the his testimony is entirely contrived for purposes of persuading this Court toward  
12 an improvident dismissal on Rule 8 grounds in an extravagant request for sanctions  
13 under Rule 41(b). For example, Mr. Lucas testifies an inability to recognize exhibits  
14 to the First Amended Complaint. Yet his own declaration and the OMNIBUS  
15 demonstrate such testimony is deplorable fabrication. Mr. Lucas states: “The  
16 attachments appear to be exhibits but are not readily identifiable, indexed, marked, or  
17 organized.” Yet Mr. Lucas can and does successfully identify numerous exhibits. He  
18 describes Exhibit 1:

19 For example, Exhibit 1 appears to consist of some 156 pages, the first 33 pages  
20 being a Cease and Desist letter from plaintiff Stuart to Mayor Filner and the  
21 Family Justice Center Alliance (FJCA)

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*California Coalition for Families and Children, et al. vs.  
San Diego County Bar Association, et al.*  
United States District Court, Southern District of California  
Exhibits to Complaint

Mr. Lucas’ ability to identify Exhibit 1  
should be no surprise: Page 1 of the pleading  
“Exhibits to Complaint” (Doc. 90-1) appears  
to the left.

# Exhibit 1

Cal. Coalition for Families and Children v. San Diego County Bar Ass'n  
13 cv 1944 CAB BLM CCFC Master Exhs. P1

Exhibit 2 is also not a challenge to identify:

*California Coalition for Families and Children, et al. vs.  
San Diego County Bar Association, et al.*  
United States District Court, Southern District of California  
Exhibits to Complaint

# Exhibit 2

Cal. Coalition for Families and Children v. San Diego County Bar Ass'n  
13 cv 1944 CAB BLM CCFC Master Exhs. P277

1 On cross examination, Plaintiffs will establish that Mr. Lucas uses a similar—  
2 indeed far less informative method for identifying his own exhibits as follows:



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15 Plaintiff will establish on cross examination that Mr. Lucas’ professed inability  
16 to identify Exhibits to Plaintiffs First Amended Complaint is entirely disingenuous.

17 Mr. Lucas’ also professes an inability to recognize page numbering of  
18 Plaintiffs’ exhibits. He claims the consecutively numbered exhibits “are not readily  
19 identifiable, indexed, marked or organized.” On cross examination Plaintiffs will  
20 confront Mr. Lucas the footer on *every page* of each exhibit consecutively marked as  
21 follows:

22 *Page 1:*

23 Cal. Coalition for Families and Children v. San Diego County Bar Ass'n  
13 cv 1944 CAB BLM

CCFC Master Exhs. P1

24  
25 *Page 2:*

26 Cal. Coalition for Families and Children v. San Diego County Bar Ass'n  
13 cv 1944 CAB BLM

CCFC Master Exhs. P2

27  
28 *Page 3:*

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3 The page numbers continue upward, one number at a time. Assuming Mr.  
4 Lucas will not disclaim an ability to count Arabic numerals, his credibility is at issue.

5 Plaintiffs further intend to impugn Mr. Lucas' credibility as a competent  
6 witness in giving opinions regarding "legal certainty": "Nor have I been able to  
7 determine to a reasonable degree of legal certainty what specific claims are being  
8 made against the SDCBA in the FAC." Lucas Decl. 2:22-23. His proposed  
9 testimony is belied by the Omnibus Memorandum of his own drafting, which  
10 identifies many claims against SDCBA. For example, Mr. Lucas offers his analysis  
11 with Claim 3.2 as follows:

12  
13 **Racketeering Claim For Relief 3.2**  
14 **Kidnapping**  
15 **Cal.Pen. C. §207(a)**  
16 **Against City Attorney Defendants, Groch, Gore**

17 1049. This is a claim for kidnapping ... against each City Attorney  
18 defendant, SDCBA, SDCBA Doe 2, Chubb, Chubb Doe 1, Groch, and Gore  
19 based upon their activities in the MALICIOUS PROSECUTION,  
20 PROSECUTORIAL MISCONDUCT, and each of the six FALSE  
21 IMPRISONMENTS.

22 Mr. Lucas offers his analysis:

23 The SDCBA is not named in the title, but is identified in the paragraph  
24 beneath the title, which appears to be a tactic to force all 58 defendants to read  
25 through every page and line of this manifesto to try to figure out who is suing  
26 whom for what.

27 Mr. Lucas has clearly identified the claim as against SDCBA. All remaining  
28 claims are similarly so identified. At deposition, unless Mr. Lucas proclaims an

1 inability to read English, he will have little choice but to impugn his testimony that he  
2 cannot fathom this organization of the First Amended Complaint.

3 Plaintiffs intend to further cross examine Mr. Lucas' experience and perception  
4 in giving opinions regarding the relevant standard of care in the legal profession. Mr.  
5 Lucas complains that he and other Defendants will have to "read through every page  
6 and line to try to figure out who is suing whom for what." Mr. Lucas accused  
7 Plaintiffs of deploying a "tactic" of forcing each Defendant to read the entire  
8 complaint. Plaintiffs intend to cross-examine Mr. Lucas on the foundation of his  
9 opinion that reading through every page and line of a complaint in order to  
10 understand who is being sued by whom is anything other than the least that may be  
11 expected of any competent lawyer.

12 c. Facts Contradicting Mr. Lucas' Recounting of Litigation History

13 In the OMNIBUS Mr. Lucas misrepresents his own involvement in this  
14 litigation prior to his filing the Omnibus brief. He states that "the court granted prior  
15 motions to dismiss for failure to comply with Federal Rule of Civil Procedure 8."  
16 This is inaccurate. In truth, the two motions to dismiss heard on December 19, 2013  
17 were granted in part with leave to amend. They were the first motions to dismiss and  
18 by only two groups of defendants—the San Diego Superior Court group (the county  
19 court and several judges) and the Commission on Judicial Performance group  
20 (judicial oversight body and its employees). Only the Superior Court group asserted  
21 Rule 8 grounds. All remaining motions were "deemed withdrawn" by the Court at  
22 hearing on December 29, 2013. As such, for all defendants other than the Superior  
23 Court Group and the Commission group, the FAC is the first and only complaint.

24 On cross examination Plaintiffs intend to establish that Mr. Lucas' testimony is  
25 false and misleading.

**III. CONCLUSION**

1 Good cause exists for leave to take Mr. Lucas' testimony prior to the hearing  
2 on this matter per the attached subpoena or at a time and place to be scheduled for  
3 convenience by the parties.  
4

5  
6 DATED: May 20, 2014

By: /s/ Dean Browning Webb

7 DEAN BROWNING WEBB  
8 ATTORNEYS AND COUNSELORS AT  
9 LAW FOR PLAINTIFF:  
10 COALITION FOR FAMILIES and  
11 CHILDREN, PBC, a Delaware Corporation

12 DATED: May 20, 2014

By: /s/ Colbern C. Stuart III

13 Colbern C. Stuart, III, President,  
14 California Coalition for Families and  
15 Children, PBC, in Pro Se  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the court's CM-ECF system per Federal Rule of Civil Procedure 5(b)(2)(E). Any other counsel of record will be served by facsimile transmission and/or first class mail this 20th day of May, 2014.

DATED: May 20, 2014

By: /s/ Colbern C. Stuart III

Colbern C. Stuart, III, President,  
California Coalition for Families and  
Children, PBC  
in Pro Se



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4 **CERTIFICATE OF SERVICE**

5 The undersigned hereby certifies that all counsel of record who are deemed to have  
6 consented to electronic service are being served with a copy of this document via the  
7 court's CM-ECF system per Federal Rule of Civil Procedure 5(b )(2)(E). Any other  
8 counsel of record will be served by facsimile transmission and/or first class mail this  
9 20th day of May, 2014.

10 By: /s/ \_\_\_\_\_

11 Colbern C. Stuart, III, President,  
12 California Coalition for Families and  
13 Children, PBC  
14 in Pro Se

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of California

California Coalition for Families and Children, et al.

Plaintiff

v.

San Diego County Bar Association, et al.

Defendant

Civil Action No. 13-cv-1944 CAB (BLM)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Stephen Lucas

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (4350 Executive Drive, Suite 260 San Diego, California 92121) and Date and Time (06/21/2014 9:00 am)

The deposition will be recorded by this method: Stenography, videography

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: All Documents referenced in Defendants' Omnibus Motion to Dismiss, Memorandum in Support, Declaration of Stephen Lucas in Support, Request for Judicial Notice in Support

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date:

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Colbern Stuart

, who issues or requests this subpoena, are: California Coalition for Families and Children, PBC, 4891 Pacific Hwy Ste 102, San Diego, CA 92110, 858.504.0171

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 13-cv-1944 CAB (BLM)

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.